GOVINDASAMY PALANIMUTHU

v.

LIAN ANN LORRY TRANSPORT & FORWARDING SDN. BHD.

HIGH COURT MALAYA, KUALA LUMPUR
VOHRAH J
[CIVIL SUIT NO. P. 331 OF 1979]
29 MARCH 1982

TORT: *Negligence - Whether injuries due to failure to provide a safe system of work - Whether plaintiff "employee" and "insured person" - Whether plaintiff disentitled from pursuing remedy at common law.*

DAMAGES: *Amount of - Employees' Social Security Act 1969, ss. 2, 9, 31.*

The plaintiff sued Lian Ann Lorry Transport & Forwarding Sendirian Berhad (the company) for negligence in that the company as his employer had failed in effect to provide a safe system of work for him resulting in his suffering serious injuries.

The facts were undisputed. The plaintiff commenced work with the company, which was engaged in the business of transporting goods, on 20 March 1978 as a driver of one of the lorries of the company. On the fourth day of his work, that is 23 March 1978, the plaintiff and his attendant (PW3) collected a consignment consisting of 18 bundles of carpet yarns from a godown at Port Kelang for delivery to "Malaysia Carpets" (the consignee) in Sungei Besi, Kuala Lumpur. The lorry was loaded mechanically by a forklift.

As the consignee did not have mechanical appliance available for the unloading of the bundles, the bundles had to be opened up for the bales to be removed one by one, as the bundle was too heavy to be lifted by two men. Whilst PW3 was snipping the metal straps of a bundle, a few bales sprang out and fell upon the back of the plaintiff who was standing on the ground assisting PW3.

The accident resulted in the plaintiff sustaining a fracture dislocation at the 12th dorsal and 1st lumbar vertebrae with almost complete transaction of the spinal cord. The plaintiff suffered partial loss of all motor functions of both his lower limbs below the groin, complete loss of sensation on the right side and partial loss of sensation on the left side of his lower limbs. He was unable to stand, walk or to have any sexual relations and could not drive.

The plaintiff testified that he was taken on by the company as a daily-paid worker for driving and also for loading and unloading goods in and out of the lorry. It was the first time he carried carpet yarns. He had never been given instructions by the company as to how to unload nor was there anyone supervising him and PW3 when they were engaged in the process of unloading. On that day the unloading had to be done manually bale by bale although the company did possess and could have provided lorries fitted with cranes to lift goods.

PW3 in his testimony confirmed the plaintiff's statement about how they were expected to unload bale by bale and how the bales had sprang out and landed on the plaintiff after the metal straps of first bundle had been cut out. In the main his description of how the accident occurred tallied with that of the plaintiff. He also stated that contributions towards Socso were made in respect of him during his employment with the company only three or four months after he commenced work with it.

The company's managing director (DW1) however testified that the instructions to his workers did not include specific instructions not to unload. His workers were not required to unload as the company was only paid as a carrier. He also stated that cranes were provided only if requested by the consignor in which case the company would hire one and charge it to the consignor. Regarding Socso, contributions for new workers would only be paid in respect of them when the company decided to make them permanent employees. He admitted that the forms which he filled up for Socso for the relevant periods did not show the plaintiff as an insured person. He also admitted that at the time of the accident the company held an insurance policy covering liability at common law in respect of the driver and attendant of the lorry.

Held:

(A) Liability

[1] There is no serious dispute that the injuries were suffered by the plaintiff in the course of performing his duties as a servant of the company. The plaintiff and PW3 had been led by the company to believe that part of their duties was to unload.

[2] It was not reasonable that the plaintiff on his fourth day of work, could in the absence of past experience or any warning or specific instructions from the company be expected to anticipate the bales springing out of the uncovered bundle. The opening of such bundles was obviously an inherently dangerous operation for only two persons. There was no evidence of any proper supervision of their work or of any proper instructions, having been given to the plaintiff as to how to unload. There is no evidence that the plaintiff in any way contributed to the accident. At common law the company is fully liable to the plaintiff.

[3] The plaintiff was not disentitled by operation of s. 31 of the Employees' Social Security Act 1969 from receiving damages under common law. He was not an "employee" or an "insured person" for purposes of s. 2 of the Act together with reg. 38 of the Employees' Social Security (General) Regulations 1971. He was daily-paid and no decision had been taken by the company to put him on its roll of regular employees. He was not under a contract as envisaged by the Act.

(B) Damages

[1] For pain and suffering and loss of amenities in respect of the serious injuries sustained by the plaintiff to the lower half of his body, an award of RM70,000 was fair and reasonable compensation, having regard to the plaintiff's background. This sum will bear 6% interest from the date of service of the writ.

[2] The award for actual loss of earnings up to the date of judgment, as the plaintiff's loss was continuing, for a period of 4 years, amounted to RM24,480.

[3] The plaintiff was entitled to claim RM4,800 as reasonable nursing expenses for a period of 48 months, which was provided by the wife from the time of accident till to date. The plaintiff's claim for these expenses was not for loss of the wife's earnings as a result of the accident as there was no evidence that she was drawing a sum of RM160 p.m. as a cook but was in effect for the value of the services that his wife had rendered by way of nursing care.

[4] The claim by the plaintiff for RM1,200 in respect of nourishing food, transport and medical expenses was reasonable.

Awards under (2), (3) and (4) shall bear 3% interest from the date of the accident.

[5] An award of RM66,330 for loss of earnings at the rate of RM510 p.m. and RM13,000 as cost of future nursing care at the rate of RM100 p.m. is awarded (the awards to bear no interest). The plaintiff claimed for 16 years' purchase of his loss of future earnings and also the cost of future nursing care was a reasonable multiplier as the plaintiff could have been expected to carry on working until the age of about 58 years i.e. for a period of 24 years from date of judgment.

[6] Costs to be taxed.

Legislation referred to:
Employees' Social Security (General) Regulations 1971, reg. 38
Employees' Social Security Act 1969, s. 31

For the plaintiff - G.T. Rajan
For the defendant - V. Krishnan

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Also found at [1982] 1 CLJ 250